No more “divorce debt” says the Government Employee’s Pension Fund

It is a well-known fact that parties married in community of property or out of community of property with application of the accrual system, have a claim against their spouses’ pension fund upon divorce.

Prior to amendments made in 2007, a pension fund was ordered by court to endorse its records to reflect that a portion of the member’s pension interest should be paid to the non-member spouse upon date of retirement.

The 2007 amendments ensured that a non-member spouse may claim his/her 50% share of the pension interest immediately on date of divorce. The pension funds therefore not only endorsed their records, but also immediately paid out the non-member’s share of the pension interest. These amendments, therefore, are in line with the “clean-break principle”.

The Government Employees Pension Fund (hereafter referred to as the “GEPF”), however, had a “small print” “divorce debt” rule that applied to all GEPF members.

This “divorce debt” entailed the following: when parties got divorced, the non-member’s share of the pension interest was immediately paid-out to him/her. However, that amount was not paid from the member’s pension interest but rather from the fund’s reserves. A debt was, therefore, created which the member was obliged to pay back to the fund upon retirement.

If the non-member’s share was paid from the member’s pension interest instead, there would be no need for the member to pay back a loan, as no debt would have been created. In essence, the GEPF, therefore, created a “divorce loan” for its divorcing members.

One of the main concerns of this debt was that it accrued interest and that the rate thereof was not prescribed in terms of the GEPF rules.

On the 1st of August 2019, the GEPF, however, announced that new rules will come into effect and that the “divorce debt” rule will no longer be implemented. Instead of creating a “divorce debt”, the GEPF will immediately pay out the non-members’ share from the member’s pension interest and will adjust the member’s years of pensionable service accordingly. This new approach is known as the “service-reduction”-model.

The member will thus receive his/her full pension benefit upon his/her retirement, which will be decreased and properly calculated in accordance with the reduced pensionable service years.

GEPF members, who got divorced during the past few years and who are impacted by the “divorce debt” rule, will have the opportunity to switch to the new service-reduction model. They are required to inform the GEPF before May 2020 or their choice. Should such a member fail to make an election, they will automatically be converted to the new service-reduction model.

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